

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B04

PLR-107553-08

Date:

June 20, 2008

TY:

DP =

FS =

Acquiring =

Corporation

Country1 =

Amount1 =

Date1 =

Date2 =

Year1 =

Dear :

This replies to a letter dated February 21, 2008 in which FS and DP request extensions of time under [Treas. Reg. § 301.9100-3](#) to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), and 1.897-2(h). The information submitted for consideration is substantially as set forth below.

DP had previously been a publicly held domestic corporation, the stock of which was purchased by Acquiring Corporation on Date1 in a tender offer. Prior to the tender offer, FS, a wholly owned Country1 subsidiary of DP, held approximately Amount1 shares of DP, which shares were not purchased by Acquiring Corporation in its tender offer. On Date2, which is shortly after Date1, when DP's shares were no longer publicly traded,

DP redeemed its shares which were held by FS for notes. FS treated the redemption as an exchange under section 302(a).

Although DP claims that its shares were not US real property interests within the meaning of section 897(c) (USRPIs), FS did not request a statement pursuant to Treas. Reg. §1.897-2(g) from DP, confirming that DP's shares were not USRPIs. Accordingly, DP did not provide such statement to FS, and did not provide notice of the same to the Internal Revenue Service pursuant to Treas. Reg. §1.897-2(h).

FS and DP now seek relief under the provisions of Treas. Reg. §§ 301.9100-1 and -3 for FS to request the applicable statement from DP, and for DP to file the applicable notice late as required by Treas. Reg. §1.897-2(h).

### Discussion

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I. Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections. Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the statement and notice fall within the definition of a regulatory election. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant FS and DP extensions of time, provided that FS and DP satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that FS and DP satisfy Treas. Reg. § 301.9100-3(a). Accordingly, pursuant to Treas. Reg. § 301.9100-1 and Treas. Reg. § 301.9100-3, FS and DP are granted an extension of time until 60 days from the date of this ruling letter to satisfy the statement, notice and withholding requirements of Treas. Reg. §§ 1.897-2(g), and 1.897-2(h) with respect to the distribution of property in redemption of stock treated as an exchange under section 302(a) that occurred in Year 1.

The granting of an extension of time is not a determination that FS and DP are otherwise eligible to comply with the statement and notice requirements. Treas. Reg. § 301.9100-1(a).

A copy of this ruling letter should be attached with the statement and the notice mailed to the IRS.

This ruling is directed only to the taxpayer who requested it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Bailey  
Assistant to the Branch Chief  
(International, Branch 4)